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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,418	06/05/2001	Herbert Benson Scher	RIA 57700	5799
26748 7590 11/30/2009 SYNGENTA CROP PROTECTION, INC. PATENT AND TRADEMARK DEPARTMENT 410 SWING ROAD GREENSBORO, NC 27409				
EXAMINER				
FUBARA, BLESSING M				
ART UNIT		PAPER NUMBER		
1618				
NOTIFICATION DATE		DELIVERY MODE		
11/30/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[department-gso.patent@syngenta.com](mailto:department-gso.patent@syngenta.com)

### Office Action Summary

**Application No.**

09/873,418

**Applicant(s)**

SCHER ET AL.

**Examiner**

BLESSING M. FUBARA

**Art Unit**

1618

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28, 29, 33-39 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) 33, 36, 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28, 29, 34, 35, 37 and 41-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Unpublished Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The examiner acknowledges receipt of amendment and remarks filed 08/04/09. Claim 44 is canceled. Claim 34 is amended. Claims 28, 29, 33-39 and 41-4 are pending. Claims 33, 36, 38 and 39 are withdrawn from consideration.

**Previous rejections that are not reiterated herein are withdrawn.**

### **Duplicate Claims**

1. The objection to claim 44 as being the duplicate of claim 28 is withdrawn in view of the cancellation of claim 44.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 28, 29, 34, 35, 37 and 41-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Scher et al. (US 4,956,129) for reasons of record.
4. Scher discloses porous shell microcapsule that has encapsulated within a substantially water insoluble material (abstract; column 2, lines 26-28), the microcapsule is made from in situ

condensation and curing of methylol etherified urea formaldehyde prepolymers in the presence of solvents, catalysts such as salicylic acid, benzoic acid and p-toluene sulfonic acid and wall modifying agents react with the methylol groups of the prepolymer (column 8, lines 29-56). The p-toluene sulfonic acid and the tetrakis mercapto compound meet compounds (ID) and (IA) respectively of claims 28, 35, 43 and 44. The compounds encapsulated in the capsules are herbicides, insecticides, fungicides, defoliants and insect repellents (column 3, line 38 to column 5, line 67) meeting claims 41 and 42. The encapsulated pesticides or fungicides are contemplated for application to the soil (column 6, line 30; column 9, line 62; column 1, lines 45-49; column 3, lines 21-24) so that the application to soil step of claim 43 is met. The carboxylate of the mercapto compound and the sulfonate of the toluene sulfonic acid meet claim 29; the process of Scher meet claims 34, 35, 37 and specifically the composition of Scher is an emulsion (see the abstract). The microcapsule encapsulating the core liquids meet the capsules of claims 28, 44 and 29.

#### ***Response to Arguments***

5. Applicant's arguments filed 08/04/09 have been fully considered but they are not persuasive.
6. Applicant argues that Scher does not anticipate the claims because p-toluene sulfonic acid is not compound ID and tetrakis mercapto compound is not formula IA. But, claim 28 and 24 requires only one of the surface modifying agents listed as formulae (IA) to (IVA). It was described that salicylic acid, benzoic acid and p-toluene sulfonic acid (column 8, lines 29-37) are some of the carboxylic acid and sulfonic acid that are useful and included in that list is also dodecylbenzene sulfonic acid. Thus the prior art only has to teach one of the compounds listed in claims 28 and 34. Mercapto tetrakis (pentaerythritol tetrakis (mercaptopropionate)) may not

fit the structure of IA and p-toluene sulfonic acid does not fit ID, but, salicylic acid fits structure ID where the x is -OH and Z is carboxylate and applicant is aware that Scher has salicylic acid as one of the surface modifying agents.

7. No claim is allowed.
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLESSING M. FUBARA whose telephone number is (571)272-0594. The examiner can normally be reached on Monday to Thursday from 7 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael G. Hartley/

Supervisory Patent Examiner, Art Unit 1618

/Blessing M. Fubara/  
Examiner, Art Unit 1618